UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

Jeremy Thompson
Manager, Dudu Oja Ije, LLC, dba RPM Outlet
and Black Market Racing
4810 S. 40th Street, Suite 2
Phoenix, AZ 85040
jeremy@rpmoutlet.com

Re: Notice of Violation of the Clean Air Act

Dear Mr. Thompson:

The United States Environmental Protection Agency has investigated and continues to investigate Dudu Oja Ije, LLC, dba RPM Outlet and Black Market Racing ("DOI") for compliance with the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. 7401-7671q, and its implementing regulations. As summarized in this Notice of Violation ("NOV"), the EPA has determined that DOI sold parts or components for motor vehicles and motor vehicle engines that bypass, defeat, or render inoperative devices or elements of design that were installed by the original equipment manufacturer in order to comply with CAA emission standards, and knew or should have known that these parts or components were for such use or put to such use. Therefore, DOI has violated Section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that "the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare."[1] Congress' purpose in creating the Act, in part, was "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution."[2]

The EPA's allegations here concern parts or components for motor vehicles and engines subject to emission standards.[3] The Act requires the EPA to prescribe and revise, by regulation, standards applicable to the emission of any air pollutant from new motor vehicles or engines that cause or contribute to air pollution, which may reasonably be anticipated to endanger public health or welfare.[4] As required by the Act, the emission standards "reflect the greatest degree of emission

[1] CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).
[2] CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
[3] *See generally* 40 C.F.R. Part 86, Subpart A (setting emission standards for these categories).
[4] CAA § 202(a)(1) and (3)(B), 42 U.S.C. § 7521(a)(1) and (3)(B).

reduction achievable through the application of [available] technology."[5] There are specific emission standards for each of these motor vehicles and engines for each pollutant and year of manufacture.[6] Pursuant to Section 203(a)(3)(B) of the CAA, the following acts and causing thereof are prohibited:

> for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

42 U.S.C. § 7522(a)(3)(B). Such parts or components are commonly referred to as "defeat devices."

EPA Certification Program

To ensure that every new motor vehicle or engine legally sold, offered for sale, imported, delivered for introduction into commerce, or introduced into commerce in the United States (collectively, "introduced into commerce") satisfies applicable emission standards, the EPA implements a certification program. Under this program, the EPA issues certificates of conformity ("COCs"), thereby qualifying motor vehicles and engines for introduction into commerce.[7] To obtain a COC, the vehicle or engine original equipment manufacturer ("OEM") must submit a COC application to the EPA for each engine family or test group of vehicles which it intends to manufacture for introduction into United States commerce.

Vehicle and engine manufacturers employ many devices and elements of design to meet emission standards. Element of design means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine."[8] For example, manufacturers employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen. Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air. Such devices include diesel particulate filters ("DPF""), exhaust gas recirculation ("EGR"), diesel oxidation catalysts ('DOC"), nitrogen oxide absorbing catalysts ("NAC"), three-way catalysts ('TWC"), and selective catalytic reduction ("SCR"). Modern vehicles and engines are equipped with electronic control modules ("ECMs"). ECMs continuously monitor engine and other operating parameters and control the emission control devices, such as the fueling strategy.

Manufacturers further employ onboard diagnostics, or "OBD," which is comprised of systems that monitor components that can affect the emission performance of a motor vehicle, detect problems with the vehicle's emission-related systems that could cause the vehicle to fail to comply with the CAA's emission standards, alert drivers to these problems, and store electronically-generated malfunction information.[9] If a problem is detected, the OBD system illuminates a warning lamp on

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[5] CAA § 202(a)(3)(A)(1)(i), 42 U.S.C. § 7521(a)(3)(A)(1)(i).

[6] *See, e.g.*, heavy-duty diesel engine emission standards at 40 C.F.R. §§ 86.004-11, 86.007-11, 86.099-11 and light-duty vehicle emission standards at 40 C.F.R. 86.1811-04. *See also* 40 C.F.R. § 86.090-8 (1990 and later model year light-duty vehicles); 86.094-9 (1994 and later model year light-duty trucks); 86.001-9 (2001 and later model year light-duty trucks); 86.004-9 (2004 and later model year light-duty trucks); 86.091-10 (1991 and later model year Otto-cycle heavy-duty engines and vehicles); 86.008-10 (2008 and later model year Otto-cycle heavy-duty engines and vehicles).

[7] 40 C.F.R. § 86.007-30.

[8] 40 C.F.R. § 86.094-2.

[9] *See* CAA 202(m), 42 U.S.C. SS 7521(m), requiring EPA to promulgate regulations requiring OBD systems for motor

the vehicle instrument panel to alert the driver. Given these functions, the OBD is part of a motor vehicle's emission control system.

Alleged Violations

Based on DOI's responses to the EPA's information request, dated March 12, 2019 ("Information Request"), issued pursuant to Section 208(a) of the CAA, the EPA has determined that DOI sold, from March 10, 2017, to March 12, 2019, hardware and software designed to bypass, defeat, or render inoperative emission control devices or elements of design installed on motor vehicles or engines, specifically light-duty diesel and gasoline automobiles and trucks. DOI sold three main categories of "defeat device" products: exhaust replacement pipes (sometimes referred to as "straight pipes"); EGR delete kits; and aftermarket ECM programmers (including hardware commonly referred to as "tuners" and software commonly referred to as "tunes"). The attached Table identifies the specific "defeat device" products and units sold by DOI from March 10, 2017, and March 12, 2019.

A principal effect of these products is to bypass, defeat, or render inoperative elements of the design that control emissions of regulated air pollutants. The exhaust replacement pipes and EGR delete kits are designed to remove or bypass emission control hardware (including DOC, NAC, DPF, EGR and/or SCR systems), which are elements of design that manufacturers employ to meet emission standards. Similarly, the aftermarket ECM programmers enable removal of emission control hardware without illuminating a malfunction indicator lamp, prompting any diagnostic trouble codes, or causing engine derating for certain vehicle applications; and/or alter fuel injection maps and other elements of design that can lead to significant emission increases compared to the OEM certified programming.

DOI knew or should have known that these products were offered for sale or installed to bypass, defeat, or render inoperative elements of design that control emissions of regulated air pollutants, based upon the function of the products, DOI's responses to the EPA's Information Request, and other descriptions of the products' functions.

Furthermore, DOI knew or should have known that these products were manufactured for, offered for sale, or sold for use on "motor vehicles" or "motor vehicle engines." The "defeat device" products sold by DOI were designed and marketed for use on specific makes and models of General Motors Company ("GM"), Ford Motor Company ("Ford"), Subaru Corporation ("Subaru"), FCA US LLC ("FCA"); Mitsubishi Group ("Mitsubishi"); Nissan Motor Co., Ltd. ("Nissan"); and Bayerische Motoren Werke AG ("BMW") diesel and gasoline automobiles and trucks. GM, Ford, Subaru, FCA, Mitsubushi, Nissan and BMW sought and obtained COCs from the EPA for these motor vehicles and engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines" under the Act.

Enforcement

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.[10] Persons violating Section 203(a)(3)(B) of the Act, 42 U.S.C. 7522(a)(3)(B), are subject to an injunction under Section 204 of the Act, 42 U.S.C. 7523, and

vehicles after 2007. *See also* 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05, and 86.1806-17.

[10] CAA §§ 204, 205, 42 U.S.C. §§ 7523, 7524.

a civil penalty of up to $4,819 for each violation.[11]

The EPA is available to discuss this matter with you in further detail, upon your request. Please contact Janice Chan, Enforcement Officer, at (415) 972-3924 or chan.janice@epa.gov or have your attorney contact Brian Riedel, Assistant Regional Counsel, at (415) 972-3924 or riedel.brian@epa.gov.

Sincerely,

AMY MILLER-BOWEN

Digitally signed by AMY MILLER-BOWEN
Date: 2020.06.08 16:43:41 -07'00'

Amy C. Miller-Bowen
Director, Enforcement & Compliance Assurance Division

Enclosure: Table

[11] CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. This civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended.

TABLE

Dudu Oja Ije, LLC, dba RPM Outlet and Black Market Racing
Violations of Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B),
For the Sale of 165 Parts or Components Between March 10, 2017, and March 12, 2019

RPM Outlet Part Number	Identifying Name of Part from RPM Outlet	Quantity
BLD 40420		6
GearBox Z		1
HNS 109003		2
HNS 109005		1
RAC RACEME-2010-2011		1
SCT 5015P		26
SCT 5416P		1
SCT 7015		42
SCT 7416		3
SCT 40490		1
DEM 125050	Downpipe	1
FLO SS653NB	Downpipe back exhaust	1
FPR 654	Turbo Back Exhaust	1
FPR 801	Downpipe back exhaust	1
FPR 864	Downpipe back exhaust	1
FPR SS835NB	Race Pipe	1
FPR SS864	Race Exhaust	1
MAG 18980	Turbo Back Exhaust	1
MAG 18982	Downpipe Back	1
MAG 18989	Turbo Back Exhaust	1
MBR GM8427	Downpipe	1
MBR S8208409	Turbo Back Exhaust	1
MBRP S62240PLM	Turbo Back Exhaust	1
MTB 5.4L-EGRD	MOTOBLUE Lightning egr blockoff kit LF2347	1
SID SD-EGRD-6.0	EGR Delete	1
SID SD-EGRD-6.4		3
SID SD-EGRD-6.7C-10	EGR Delete	1
DEM K4235S-RP	Turbo Back Exhaust	1
DEM K4346A	Turbo Back Exhaust	2
DEM K4346s	Diamond Eye	1
DEM K5350A-RP	Turbo Back Exhaust	1
DEM K5350S	Turbo Back Exhaust	2
DEM K5118A-RP	Downpipe	1
RPM / VIB 11619	MIL Eliminator	10
WPR 963-111-101	CEL Eliminator	7
BBK 40310	BBK	1
BBK 4053	BBK	1
DEM K4232S	Off-RD	1
AP 335I-171	Downpipe	1
ARH 10067	Long Tube Header	1
ARH 10069	Off Road X-Pipe	1

ARH 10103	Downpipe	6
ARH 10153	Headers with connecting pipes	1
ARH 10374	Long Tube Headers Without Cats	1
ARH C7-14178300LSNC	Headers with connecting pipes	1
ARH C7-14200300LSNC	Long Tube Header	1
ARH CAV8-10200300LSNC	Headers and connection pipes	1
ARH RM156-09134300LSNC	Headers with connecting pipes	1
BAS 5011R2M	Off-Road Downpipes	1
BAS 54150L2	Connection Pipe	2
BOR 17249	Long Tube Header	1
BOR 60547	X pipe	2
BOR 60555	Borla	2
KOK 21603100	Off Road X-Pipe	1
KOK 21613100	Connection Pipe	4
KOK 31013110	Connection Pipe	1
BBK 1815	BBK	1
BBK 18160	Offroad Mid / connecting Pipe	3
ARH LT-99134300LSNC	Headers and connection pipes	1
TOTAL		**165**